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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms

Report of the Secretary-General

Introduction

1. In its resolution 1996/35 of 19 April 1996, entitled "Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms", the Commission on Human Rights, having taken note of the report of the Secretary-General (E/CN.4/1996/29 and Add.1-3) prepared in compliance with its resolution 1995/34, requested States to provide information to the Secretary-General about legislation already adopted, as well as that in the process of being adopted, relating to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms (para. 4).

2. In paragraph 6, the Secretary-General was requested to prepare an additional report on this subject, taking into account the information provided by States, for submission to the Commission at its fifty-third session.

3. Pursuant to this resolution, the Secretary-General, on 15 August 1995, addressed requests for information to all Governments.

4. By 9 December 1996, replies have been received from the following States: Colombia, Mauritius, Mexico, Philippines, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland. The Government of Sweden referred to the information which it had submitted on 25 October 1995 pursuant to Commission resolution 1995/34 (E/CN.4/1996/29).

5. The present report contains a summary of the substantive information received. Any additional replies will be reproduced in an addendum to the present document.

INFORMATION RECEIVED FROM STATES

Colombia

[Original: Spanish]
[2 September 1996]

The Government of Colombia submitted a copy of Law No. 00288 of 8 July 1996* which "establishes procedures for compensating victims of human rights violations in accordance with the decisions of various international human rights bodies", pursuant to paragraph 4 of Commission on Human Rights resolution 1996/35.

Mauritius

[Original: English]
[17 October 1996]

The Government of Mauritius submitted the following legislation:*

(i) Section 17 of the Constitution of the Republic of Mauritius;

(ii) Articles 1382 and 1384 of the Civil Code which allow a victim to sue the alleged tortfeasors and his master respectively for damages;

(iii) The Ilois Trust Fund Act 1982 which deals with the payment of compensation to the population which was removed from the Chagos Archipelagos.

Mexico

[Original: Spanish]
[21 October 1996]

1. On 10 January 1994, the Government of Mexico amended various federal laws and provisions on the question of restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms. These amendments were brought to the attention of the Centre for Human Rights and were published in document E/CN.4/1996/29/Add.1, which was submitted to the United Nations Commission on Human Rights for consideration.

2. No further amendments of federal legislation have been promulgated. However, as a result of reforms adopted in the interest of the victims of offences, various federative entities of the Republic have adopted laws aimed at caring for and compensating victims.

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* Available for consultation in the files of the Secretariat.

3. In the State of Puebla, the Law for the Protection of Victims of Offences was promulgated on 20 March 1996, under which the Government Procurator's Office is responsible for performing various functions on behalf of such victims. This Law also establishes a fund, constituted by fines imposed by the courts, to increase the amount of assistance available to victims.

4. In the State of Tlaxcala, a Fund for the Protection of Victims of Offences and Assistance to Indigent Defendants has been operational since July 1991; one of its functions is to assist specific victims of offences.

5. The City of México has already drafted a law on justice for victims of offences in the Federal District.

6. In the State of Mexico, a preliminary draft law has been prepared with a view to the establishment of a Centre to Care for Victims of Offences in the State of Mexico.

7. A similar Centre, namely, the Centre for Care to Victims of Offences, was established in the State of Nuevo León in 1993, and is operational. A draft law has also been drawn up in this State on the protection of persons victims of offences, and it is hoped that it will shortly be discussed and approved by its Congress.

8. It is clear, therefore, that the legislative progress made at the federal level in connection with compensation for victims of offences has been suitably supplemented by federative entities, and it is to be hoped that, in the near future, all the necessary and relevant legal provisions on the subject will be in place, particularly in respect of acts committed by public servants.

Philippines

[Original: English]
[1 November 1996]

The Government of the Philippines submitted the following list of relevant legislation already adopted and enacted into law from the Ninth to the Tenth Congress (July 1992 to the present), as well as pending bills filed in the Senate of the Philippines:

Approved legislation

1. Republic Act (R.A.) No. 8188 - "An Act Increasing The Penalty and Imposing Double Indemnity For Violation Of the Prescribed Increases Or Adjustments In the Wage Rates, Amending For The Purpose Section Twelve Of The Republic Act Numbered Sixty-Seven Hundred Twenty-Seven, Otherwise Known As The Wage Rationalization Act". This amendatory law aims to minimize rampant violations of the minimum-wage and other labour standards. The amendment increases the amount of fines and the number of years of imprisonment and imposes civil obligation in an amount double the unpaid benefits due the employees by way of restitution, on any person, company or employer who fails or refuses to pay the prescribed increases or adjustments in the wage rates.

2. R.A. No. 7637 - "An Act Appropriating The Sum Of Ten Billion Pesos For The Aid, Relief, Resettlement, Rehabilitation And Livelihood Services, As Well As Infrastructure Support For The Victims Of The Eruption of Mt. Pinatubo, Creating The Mt. Pinatubo Assistance, Resettlement And Development Commission, And For Other Purposes". This law appropriates the sum of 10 billion pesos to help the victims of the eruption of Mt. Pinatubo and its after-effects. To carry out the objectives stated in this law, it provides for the creation of the Mt. Pinatubo Assistance, Resettlement and Development Commission.

3. R.A. No. 7641 - "An Act Amending Article 287 Of Presidential Decree No. 442, As Amended, Otherwise Known As The Labour Code Of The Philippines, By Providing For Retirement Pay To Qualified Private Sector Employees In The Absence Of Any Retirement Plan In The Establishment".

4. R.A. No. 7657 - "An Act To Amend R.A. 7637". This law amends section 5 (a) of R.A. No. 7637 increasing the 1993 appropriation for vital infrastructure projects from 1.5 billion to 3.5 billion pesos to be generated from the corresponding reduction of the appropriation in the same section of said Act from 5 billion to 3 billion pesos for resettlement and livelihood programmes for the victims of the Mt. Pinatubo eruption.

5. R.A. No. 7696 - "An Act Amending Certain Sections Of Republic Act No. 6948, Otherwise Known As 'An Act Standardizing And Upgrading The Benefits' For Military Veterans And Their Dependants'". This law amends certain sections of R.A. 6948 and provides that military veterans who have never enjoyed educational benefits under Philippine law and under the United States law and desire to study, may be admitted to any school, college or university with all school fees shouldered by the Government. This benefit shall also be granted to one direct descendant of a veteran in whose favour he renounces such right; or the surviving spouse or direct descendant of a deceased veteran in whose favour the same is applied for by the surviving spouse. Provided further that a veteran is disabled owing to sickness, disease or injuries sustained in the line of duty he shall be given a monthly disability pension. A veteran who is at least 65 years old shall likewise be paid an old-age pension of 1,000 pesos monthly for life, unless he is actually receiving a similar pension for the same consideration from other government funds. In case of death of the veteran, the surviving spouse shall be given a pension of 1,000 pesos a month and the same amount shall also be given for each unmarried minor child until the surviving spouse remarries or dies and until the minor child dies, marries, or reaches the age of 18.

6. R.A. No. 7883 - "An Act Granting Benefits And Incentives To Accredited (Barangay) Village Health Workers And For Other Purposes". This law grants incentives to (barangay) village health workers in the form of hazard and subsistence allowance, training programmes, compensation for injury, insurance, medical benefits and free legal services.

Pending bills

1. Senate Bill Number (SBN) 249 - "An Act Complying With The Constitutional Mandate To Render A Measure Of Justice To The Victims Of Human Rights Violations As A Consequence Of The Proclamation Of Martial Law, And Thereafter, By Compensating Them, And For Other Purposes".

2. SBN 287 - "An Act Defining Certain Rights Of Persons Arrested, Detained Or Under Custodial Investigation As Well As The Duties Of The Arresting, Detaining And Investigation Officers, And Providing Penalties For Their Violation Thereof".

Russian Federation

[Original: English/Russian]
[14 November 1996]

The Government of the Russian Federation submitted a copy of the following legislative acts adopted in the Russian Federation on the issue in question:

1. Law of 19 October 1991 of the Russian Federation on the Rehabilitation of Victims of Political Repression *.

2. Law on amending and supplementing the Law of the Russian Federation on the Rehabilitation of Victims of Political Repression, adopted by the State Duma on 11 October 1995*.

3. Order of the President of the Russian Federation of 18 June 1996 on the peasant uprisings of 1918-1922*.

Ukraine

[Original: Russian]
[24 October 1996]

The Constitution of Ukraine was adopted on 28 June 1996.

Article 55 of the Constitution states that:

"The rights and freedoms of individuals and citizens shall be protected by the courts.

"Decisions and acts (or inaction) of State government bodies, local government bodies, civil servants and officials may be appealed against in court.

"Everyone shall have the right to appeal for the protection of his rights to the Commissioner for Human Rights of the Supreme Soviet of Ukraine.

"Everyone shall have the right, after having exhausted all domestic remedies, to appeal for the protection of his rights and freedoms to the appropriate international legal bodies or to the appropriate organs of international organizations of which Ukraine is a member or in which it participates.

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* Available for consultation in the files of the Secretariat.

"Everyone shall have the right to protect his rights and freedoms from violation and illegal infringement by all means not prohibited by law."

Article 56 of Ukraine's Constitution sets forth and guarantees the right of individuals and citizens to compensation from the Government or local government bodies in respect of any material and moral injury caused by the unlawful decisions, acts (or inaction) of State government bodies, local government bodies, civil servants or officials in the performance of their duties.

The right of every citizen to know his rights and duties is guaranteed.

Ukraine's Law supplementing and amending the Penal Code of Ukraine, the Code of Criminal Procedure of Ukraine and the Code of Administrative Violations, as well as the Decision of the Supreme Soviet of Ukraine on the implementation and application of this Law of 7 July 1992, added article 53-1 to Ukraine's Code of Criminal Procedure, specifying the obligations of investigating bodies, official investigators, the public prosecutor and the courts in taking action to provide compensation for the injury caused to citizens by illegal acts.

On 22 April 1993, the Code of Criminal Procedure was supplemented by article 93-1 on the reimbursement of the cost of in-patient treatment of victims of offences.

Under Ukraine's Law on procedures for the compensation of injury caused to citizens by the unlawful acts of bodies conducting investigations or preliminary investigations, the public prosecutor's office and the courts, citizens of Ukraine are entitled to compensation for injury. Such compensation is paid in full, regardless of the liability of the officials, bodies conducting investigations or preliminary investigations, the public prosecutor's office or the courts.

As regards the question of rehabilitation, the person concerned must seek redress with the public prosecutor's office or the court which handed down the most recent decision. If he is not in agreement with the decision (order) of the court, it may be appealed to a higher court of appeal.

The laws governing the activities of rights protection bodies contain provisions on compensation for the moral and material injury that may be caused to citizens by such bodies.

For example, article 5 of Ukraine's Law of 25 March 1992 on the Ukrainian Security Service describes the functions of the Service in respect of human rights, stating that they shall be performed on the basis of respect for human rights and freedoms. The subordinate bodies and officials of the Ukrainian Security Service are required to respect the dignity of, and adopt a human attitude towards the individual. In exceptional circumstances, and with a view to putting an end to and exposing State crimes, certain rights and freedoms of the individual may be temporarily restricted in the manner and to the extent specified by Ukraine's Constitution and legislation.

The unlawful restriction of the legitimate rights and freedoms of the individual is inadmissible and persons restricting such rights are held liable for their acts under the law. Should officials of the Ukrainian Security Service violate an individual's rights or freedoms in the performance of their official duties, its administration is required to take steps to restore such rights and freedoms, to provide compensation for any moral or material injury caused and to bring the guilty parties to account. The Ukrainian Security Service is required, within one month, to provide them with a written explanation of the restriction of their rights and freedoms. The persons concerned are entitled to appeal to a court against the unlawful acts of officials and subordinate bodies of the Ukrainian Security Service.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[2 December 1996]

1. The law of the United Kingdom does not treat grave violations of human rights as constituting a distinct category of unlawful act and therefore does not make specific provision for the award of compensation in such cases. However, that does not mean that a victim would be unable to obtain compensation.

2. The report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, from which the relevant provisions of resolution 1995/34 derived, identified grave violations of human rights as involving the following: genocide, slavery, summary executions, torture, enforced disappearances, arbitrary and prolonged detention, deportation or forcible transfer of population or systematic discrimination. The United Kingdom would not tolerate the violation of human rights through any of these acts. However, all of the acts or practices involved would be unlawful and would therefore involve the commission of crimes in addition to giving rights to a civil right to compensation. For example, both genocide and torture have expressly been criminal offences for which severe penalties may be imposed (pursuant to the Genocide Convention and the Convention against Torture respectively), while arbitrary detention and summary execution would be offences under the ordinary criminal law. The Criminal Injuries Compensation scheme, which was introduced in 1964, provides for the payment of compensation out of public funds to the blameless victims of violent crimes. As regards systematic discrimination, there is provision in both legislation which deals with discrimination on grounds of sex (the Sex Discrimination Act 1975, as amended, and the legislation which deals with discrimination on the grounds of race (the Race Relations Act 1976, as amended) which enables persons who claim to be victims of such discrimination to apply to a tribunal or, in some cases, to a court for the award of compensation.